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C. REMARKS

Specification

Applicants have amended the specification above to include the application serial numbers of the related cross-references.

Interview Summary

On April 5, 2005 at 3:30 PM EST, an interview was conducted via telephone between Amy Pattillo, Applicants' Representative, and Examiners Rasha Al Aubaidi and Ahmad Matar. No exhibits were shown, nor demonstrations conducted.

Applicants' representative previously presented a proposed agenda for the interview requesting discussion of the following items:

- (1) Applicants respectfully request allowance of claim 1 as not obvious under Walker in view of Biorge. The Examiner cites Walker as teaching a system in which a user can purchase advancement in a hold queue and Biorge as teaching a system for allocating and redeeming incentive credits for a customer that enters into a transaction with one of the providers participating in the incentive system. The Examiner's rejection under Walker in view of Biorge does not show, however, how either reference teaches a system that detects an advancement token earned by a caller waiting in a hold queue and stores the advancement token for redemption in a future call to adjust a waiting position. Further, the combination of the two references would lead to a caller using the portable card taught by Biorge as a way for paying for the current offer to advance in a call queue, not to a earning and storing advancement tokens while waiting on hold for use in a future call to advance in position.
- (2) Applicants respectfully note that in the previous response dated 10/6/2004, Applicants requested that the Examiner provide evidence of the "official notice" taken with regard to authentication of a caller according to voice identity in claims 7, 17, and 27, however, the Examiner did not provide any documentary evidence as required by 37 CFR 1.104(c)(2).

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Examiner Matar stated that the items requested for discussion by Applicants' representative should be included in the response and were not matters that the Examiners were willing to discuss during an interview. Examiner Matar concluded the interview. No agreement was reached with respect to the claims. Applicant is filing this response for further review by the Examiner.

35 USC § 103(a)

Applicants note the responsibility under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made. Applicants note that all claims are commonly owned.

1. Claims 1-7, 9-17, 19-27, and 40-41 are not obvious under Walker et al. in view of Biorge et al.

Claims 1-7, 9-17, 19-27, and 40-41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker et al. (US Patent Number 5,946,388) (hereinafter also referred to as Walker) in view of Biorge et al. (US Patent Number 5,806,045) (hereinafter referred to as Biorge). The Examiner carries the burden of proving a prima facie case of obviousness for a 103(a) rejection. Applicants respectfully assert that claims 1-7, 9-17, 19-27, and 40-41 are not obvious under Walker in view of Biorge and therefore the rejection should be withdrawn and the claims allowed.

Claims 1, 11, 21, and 41

With regards to claims 1, 11, 21, and 41, independent method claim 1, which is representative of independent system claim 11, independent computer program product claim 21, with regard to similarly recited subject matter and rejection, reads as follows:

1. (Original) A method for caller position management within a hold queue comprising:
 - detecting an advancement token earned by a caller waiting in a hold queue; and

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storing said advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller, wherein future redemption of said advancement token will cause adjustment of a waiting position.

In the rejection of claims 1, 11, 21, and 41, the Examiner states the following grounds:

Regarding claim 1, Walker teaches a PBX/automatic call distributor (ACD) system that allows callers to exercise control over their rank order within a phone queue. The ACD accesses a call database and develops offers to be made to callers, based upon a caller reaching a particular position in a queue or at a position at which the call is first placed in the queue. An interactive voice response unit (IVRU) is employed to offer a caller a chance to move up in the queue in return for a payment (see abstract).

Walker does not specifically teach the use of an advancement token in order to adjust the position of the caller in a waiting queue.

However, Biorge teaches a system and method for allocating and redeeming incentive credit for a customer that enters into a transaction with one of the providers participating in the incentive system (70), see abstract and Fig. 3. Biorge also teaches that after the incentive credits are detected and the customer identity is recognized (see col. 5, lines 3-16), customer can choose to redeem some or all of his/her incentive credits (see col. 2, lines 50-67). [Office Action, p. 3-4]

Neither Walker nor Biorge, separately or in combination, teaches or suggests all the limitations of claims 1, 11, 21, and 41

In establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). In particular, in determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). Appellants respectfully note that the Examiner does not show, nor do the references teach or suggest, separately or in combination, the claimed invention as a whole, and in particular does not teach detecting an advancement token earned by a caller waiting in a hold queue or storing said

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advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller.

First, Walker in view of Biorge does not teach detecting an advancement token earned by a caller waiting in a hold queue or storing said advancement token for redemption in a future call by said caller. Walker discloses that a caller currently waiting in a hold queue can pay to advance in the hold queue. *Walker*, abstract. Biorge discloses a portable card that includes incentive points, where the caller swipes the card at a vendor to redeem the points for a purchase. *Biorge*, abstract. The Examiner states that Walker does not teach “the use of an advancement token in order to adjust the position of the caller in a waiting queue.” [Office Action, p. 3] Further, however, neither Walker nor Biorge, however, teach detecting an advancement token earned by a caller or that the caller earns the advancement token while waiting in the hold queue. And, further, neither Walker nor Biorge teach storing the advancement token for redemption in a future call. In contrast, the present invention teaches both detecting the advancement token earned by a caller during a current hold queue wait and storing that advancement token for redemption in a future call. In conclusion, a prima facie case of obviousness under 103(a) is not established for claims 1, 11, 21, and 41 because at least one element of claims 1, 11, 21, and 41 is not taught by Walker and Biorge, separately or in combination. Because a prima facie case of obviousness under 103(a) is not established for the claims 1, 11, 21, and 41, Appellants respectfully request allowance of claims 1, 11, 21, and 41.

Second, Walker in view of Biorge does not teach storing said advancement token according to an authenticated identifier for said caller. The Examiner cites Biorge as teaching that “after the incentive credits are detected and the customer identity is recognized (see col. 5, lines 3-16), customer can choose to redeem some or all of his/her incentive credits (see col. 2 lines 50-67).” [Office Action, p. 4] Col. 5, lines 3-16 read:

Second, the user of the device (the customer) is checked to determine whether he is a valid user. User verification is preferably performed by requiring that the user enter a user code and comparing the entered user code with a reference user code stored within the portable device. Only if both the portable device and the user are valid will a transaction between a customer and a provider be allowed to take place. The verification process has thus far been described, but

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it should be noted that the same process may also be performed on the provider device. This is desirable where the provider device is also a portable device, which it is in the preferred embodiment of the present invention.

Thus, the Examiner equates a code entry system as teaching that "the customer identity is recognized" and then equates "the customer identity is recognized" as teaching an "authenticated identity."

Applicants respectfully assert that Biorge only discloses customer validity, which under its ordinary definition does not teach not customer identity recognition. In addition, Applicants respectfully assert that customer validation does not teach identity authentication. The Free On-Line Dictionary of Computing defines authentication as "the verification of the identity of a person or process." In addition, the specification teaches identity authentication at p. 15 line 24- p. 16 line 3 as:

"An authentication service within telco application server 22 may include identification and verification of the identity of a caller and/or callee of a particular call. Such a service may require that subscribers provide voice samples when setting up a subscription. The stored voice samples may then be compared against voice samples received for a particular call in order to authenticate the identity of a current caller or callee of the particular call."

Thus, while the customer verification of Biorge discloses validating that expected numbers are punched in, authentication implies using some method that actually verifies who the customer is. Further, in the present invention, the advancement token is stored for access for future redemption according to the authenticated identifier. Therefore, because the user code entry of Biorge does not teach or suggest an authenticated identity, Walker in view of Biorge does not teach or enable storing said advancement token according to an authenticated identifier for said caller. As a result, at least one element of claims 1, 11, 21, and 41 is not taught and therefore prima facie obviousness is not shown and the claims should be allowed.

There is no suggestion or motivation to modify Walker by Biorge

To establish a prima facie case of obviousness, there must be a suggestion or motivation to modify the references. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438, 1442 (Fed Cir. 1991).

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In particular, the teaching, suggestion or motivation to combine or modify the teachings of the prior art to produce the claimed invention must be found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art and the examiner must explicitly point to the teaching within the reference suggesting the proposed modification. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Absent such a showing, the Examiner has impermissibly used "hindsight" occasioned by Applicants' own teaching to reject the claims. *In re Surko*, 11 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997); *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990); *In re Laskowski*, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989). Applicants respectfully note that the Examiner does not show, nor does Walker teach, a suggestion or motivation to modify Walker to teach the claimed invention as a whole and in particular detecting an advancement token earned by a caller waiting in a hold queue and storing said advancement token for redemption in a future call by said caller according to an authenticated identifier for said caller.

First, there is no suggestion or motivation to modify Walker in view of Biorge because Walker teaches away from an advancement token earned by a caller waiting in a hold queue. Walker discloses that the caller pays to advance while currently waiting in a hold queue. *See Walker*, abstract and fig. 3. In contrast, the present invention teaches that a caller earns the advancement token. Thus, Walker teaches away from any suggestion or motivation to allow a caller to earn an advancement token by requiring that the caller pay for advancement.

Second, there is no suggestion or motivation to modify Walker in view of Biorge because Biorge is not analogous art to Walker. To rely on a reference as a basis for a rejection under 35 U.S.C. 103, the reference must be analogous prior art, and in particular the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Walker discloses that a caller currently waiting in a hold queue can pay to advance in the hold queue. *Walker*, abstract. Biorge is a transactional based

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system that focuses on storing customer incentive points on a "customer-carried portable device", which is similar to a credit card that the customer swipes at a provider device to complete a transaction; if a incentive points may be stored on the customer-carried device as a result of the transaction. (See Abstract) In contrast, Walker focuses on the field of telephony, rather than the field of physical credit card based transactions. Thus, where the Examiner uses Biorge as a basis for the rejection under 35 U.S.C. 103, the rejection is improper because Biorge is within a field, credit card transactions, that is not within the field of telephony, and therefore there is no suggestion or motivation to modify Walker by Biorge.

There is No Reasonable Expectation of Success in the Proposed Modification of Walker in view of Biorge

To establish a prima facie case of obviousness, there must be a reasonable expectation of success in the proposed modification of Walker in view of Biorge. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). Applicants respectfully assert that there is no reasonable expectation of success in the proposed modification of Walker by Biorge. Claim 1 teaches a method for detecting a an advancement token earned by the caller while the caller is waiting in the hold queue and storing that advancement token for future redemption. Walker discloses that a caller currently waiting in a hold queue can pay to advance in the hold queue. *Walker*, abstract. Biorge discloses allowing a customer to redeem incentive credits for a purchase by the customer from a provider participating in the incentive system. *Biorge*, abstract and fig. 3. The Examiner states that the combination of the references would incorporate Biorge into Walker, where the Examiner cites Biorge as teaching "the feature of advancement token that is used to adjust the position of the caller in a waiting queue". Applicants respectfully note, however, that Biorge discloses a portable card that includes incentive points, where the caller swipes the card at a vendor to redeem the points for a purchase. *Biorge*, abstract. Biorge does not teach an advancement token that adjust the position of a caller in a waiting queue, and therefore, there is no reasonable expectation of success in the proposed medication of Walker by Biorge. In addition, Applicants respectfully assert that the combination

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of Walker as modified by Biorge would lead to a caller using the portable card taught by Biorge as a way for paying for the current offer to advance in a call queue as taught by Walker, not to a earning and storing advancement tokens while waiting on hold for use in a future call to advance in position. Thus, there is no reasonable expectation of success in the proposed modification of Walker in view of Biorge and therefore no prima facie case of obviousness as to claim 1. Therefore, because there is no prima facie case of obviousness as to claim 1, Applicants respectfully request allowance of claims 1, 11, 21, and 41.

In addition, with regard to claim 41, claim 41 reads as follows:

41. (Original) A method for call queue management, comprising:
receiving a call from a caller at a hold queue, wherein an identity of said caller is authenticated;
detecting a characteristic of said caller for which an automatic advancement token is granted; and
automatically adjusting a position of said caller in said hold queue according to said automatic advancement token.

Applicants respectfully assert that the arguments made with respect to the lack of prima facie obviousness in view of the combination of Swope and Biorge also apply to claim 41.

In addition, Applicants respectfully note that claim 41 includes the element of "detecting a characteristic of said caller for which an automatic advancement token is granted". The Examiner does not point to any teaching of Swope or Biorge of detecting a characteristic of the caller and automatically granting an advancement token based on the characteristic of the caller. Thus, at least one element of claim 41 is not taught by Swope or Biorge, separately or in combination, and therefore claim 41 is not obvious in view of Swope and Biorge and the claims should be allowed.

Claims 2-7, 9, 10, 12-17, 19, 20, 22-27, 41

Regarding claims 2-7, 9, 10, 12-17, 19, 20, 22-27, and 41, Applicants respectfully assert that because the independent claims 1, 11, 21, and 41 upon which these dependent claims respectively rely are not obvious in view of Walker and Biorge, alone or in combination, then these dependent claims are also not obvious in view of Walker and Biorge and the dependent

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claims should be allowed. In addition, Applicants specifically traverse the rejection of claims 2, 12, and 22; claims 3, 13, and 23; and claims 7, 17, and 27.

Claims 2, 12, 22, and 40

With regard to claims 2, 12, 22 and 40, the Examiner states the following rejection:

For accessing “caller profile” feature examiner takes official notice that this feature is obvious and well known in the art. Also giving the caller the option to use some or all of his/her advancement token is an obvious limitation. As a matter of fact, most callers who are waiting in a queue will be encouraged to use some of the advancement tokens that they earned previously in order to shorten their waiting time in the queue. [Office Action, p. 5]

First, Applicants respectfully request that the Examiner provide supporting documentary support the statement of “official notice” and “common knowledge”. The Examiner clearly states a taking of official notice as to “the caller profile feature”. Applicants also respectfully assert that the Examiner’s bare assertions of what is an “obvious limitation” or “as a matter of fact” is relying on “common knowledge”. Applicants request that if the rejection is to be maintained on these grounds that the Examiner provide documentary evidence of the basis of the assertion of what is “official notice” and “common knowledge” in the next Office Action. MPEP 2144.03, 37 CFR 1.104(c)(2). *See also Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test.)

Second, regardless of whether there is support for the official notice, claims 2, 12, 22, and 40 do not merely teach an “accessing caller profile feature” as cited by the Examiner but teach accessing a caller profile according to said authenticated identifier, wherein said caller profile comprises a previously earned advancement token. Because the Examiner does not point out, nor does the combination of Swope in view of Biorge teach accessing a caller profile according to the authenticated identifier, wherein the caller profiles comprises a previously earned advancement token, claims 2, 12, 22, and 40 are not obvious in view of the combination of Swope and Biorge and the claims should be allowed.

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Claims 3, 13 and 23

Regarding claim 3, Applicants respectfully assert that the Examiner does not prove prima facie obviousness because the combined prior art references do not teach or suggest all the claim limitations.

Claim 3 currently reads:

3.(Original) The method for caller position management within a hold queue according to claim 1, wherein storing said advancement token further comprises:
storing said advancement token according to said authenticated identifier at a caller profile server accessible to a plurality of a call centers, wherein said advancement token is redeemable across a selection of said plurality of call centers for said future call.

In establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). The Examiner cites "storing said advancement token according to said authenticated identifier at a caller profile server" as reading on Biorge's customer-carried, portable device (see abstract, col. 2, lines 26-33 and lines 50-65). [Office Action, p. 5] A customer carried, portable device implies, by its name and description, a portable device that the customer retains. In the Free On-Line Dictionary of Computing (copyright 1993-2004 Denis Howe, available via <http://www.dictionary.com>), a "device" is defined as a "peripheral" which is further defined as "Any part of a computer other than the CPU or working memory...." Further, Biorge specifies, in the abstract that data is "stored on the customer-carried device" and that "by using a customer-carried device, transactions may be conducted off-line." Thus, Applicants respectfully assert that a customer-carried device is merely a storage medium, independent of a computer system.

In contrast, the present invention describes storing the advancement token at a call profile server accessible to multiple call centers. In the Free On-Line Dictionary of Computing (copyright 1993-2004 Denis Howe, available via <http://www.dictionary.com>), a "server" is defined as "a computer which provides some service for other computers connected to it via a network." Further, the specification illustrates the caller profile server as accessible via a network (p. 29, lines 7-8 read: As illustrated, on hold system 42 accesses caller profile server 50
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via network 20). Applicants respectfully assert that a portable storage medium alone, as taught by the customer-carried device of Biorge, does not teach a server system, which by its ordinary meaning is at least a computer that provides services via a network. Therefore, because the Examiner fails to show how the combined prior art references teach the limitations of claim 3, Applicants respectfully assert that prima facie obviousness is not proved and respectfully request allowance of method claim 3 and corresponding system and program claims 13 and 23.

Claims 7, 17, and 27

Regarding claim 7, Applicants respectfully assert that the Examiner does not prove prima facie obviousness because the combined prior art references do not teach or suggest all the claim limitations. In addition, Applicants traverse the Examiner's assertion of what is well known in the art.

Claim 7 currently reads:

7. (Original) The method for caller position management within a hold queue according to claim 1, wherein said authenticated identifier for said caller is authenticated according to a voice identity of said caller.

The Examiner claims that both Biorge and Walker teach identifying the caller or the customer by having him/her enter a pass code or some sort of authentication number, but not authentication according to voice identity. [Office Action, p. 6] The Examiner cites that authentication according to voice identity is obvious and well-known. [Office Action, p. 6] In addition, the Examiner states that "as a matter of fact, many references teach the use of voice recognition, which is an old and well-known feature in the art." [Office Action, pp. 6-7]

The Examiner previously stated the same grounds of rejection and same statement of what is well known in the office action dated 7/7/2004. In a response to the previous office action, dated 10/6/2004, Applicants noted that the Examiner's assertion as to what is well-known in the art is a statement as to what is "common knowledge" and requested that the Examiner provide supporting documents in the next office action, if the rejection is to be maintained on the grounds of this "common knowledge" as required under MPEP 2144.03, 37 CFR 1.104(c)(2).

See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to AUS920010827US1

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some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test.) In the current office action dated 1/26/2005, the Examiner repeats the statement as to what is “well-known” without providing supporting evidence for this statement. Applicants again request that the Examiner provide supporting documents for this statement of what is “common knowledge” in the next office action if the rejection is to be maintained on the grounds of this “common knowledge”. In addition, App

Second, Applicants note that in establishing a prima facie case of obviousness under 103(a), the combined prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.3d 488, 20 USPQ2d 1438 (Fed Cir. 1991). The Examiner states that “authentication according to voice identity of the caller is obvious and well known” and also that “many references teach the use of voice recognition”. [Office Action, pp. 5, 6] Applicants assert that use of voice recognition does not teach or suggest voice authentication, even though the Examiner seems to equate voice authentication and voice recognition. The Free On-Line Dictionary of Computing (copyright 1993-2004 Denis Howe, available through <http://www.dictionary.com>) defines voice recognition as the Free On-Line Dictionary of Computing defines authentication as “the verification of the identity of a person or process.” Moreover, the specification teaches identity authentication at p. 15 line 24-p. 16 line 3 as:

“An authentication service within telco application server 22 may include identification and verification of the identity of a caller and/or callee of a particular call. Such a service may require that subscribers provide voice samples when setting up a subscription. The stored voice samples may then be compared against voice samples received for a particular call in order to authenticate the identity of a current caller or callee of the particular call.”

Thus, Applicants respectfully assert that voice recognition, which is determining what word is spoken, does not teach or suggest the area of voice authentication, which is verifying the identity of a person by a voice sample.” Walker and Biorge both suggest voice recognition. No reference yet cited by the Examiner teaches voice authentication. Therefore, because the Examiner fails to show how the combined prior art references, including knowledge in the art, teach the limitations of claim 7, Applicants respectfully assert that prima facie obviousness is not

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proved and respectfully request allowance of method claim 7 and corresponding system and program claims 17 and 27.

2. Claims 8 and 18 are not obvious under 103(a) under Walker in view of Biorge and in view of Stimson

Claims 8 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Biorge and further in view of Stimson et al. (US Patent Number 6,502,745). Regarding claims 8 and 18, Applicants respectfully assert that because the independent claims 1 and 11 upon which these dependent claims rely are not obvious in view of Walker and Biorge, alone or in combination, then these dependent claims are also not obvious in view of Walker, Biorge, and Stimson et al. and the dependent claims should be allowed.

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Conclusion

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment. Further, Applicants reiterate the request for a telephone conference with the Examiner at the Examiner's earliest convenience.

Respectfully submitted,

 4/26/2005

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